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PATENT APPLICATION
10/075,861

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: **Meserth** § Art Unit: **2179**
Serial No.: **10/075,861** § Examiner: **Hanne**
Filed: **February 14, 2002** § Attorney Docket: **RPS9 2001 0150 US1**
For: **System and Method for**
Controlling Real-Time Display

I, the undersigned Joseph P. Lally, hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the US Postal Service with sufficient postage as first class mail in an envelope addressed to: MAIL STOP APPEAL BRIEF - PATENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

March 2, 2007

Date

Signature

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

In furtherance of a previously filed Notice of Appeal, Appellant hereby submits this Appeal Brief under 37 CFR § 41.37 to appeal rejections set forth in a final office action mailed October 31, 2005 (the Office Action).

A petition extending the filing period is submitted herewith.

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I. REAL PARTY IN INTEREST

The real party in interest is:

International Business Machines Corporation
Armonk, NY 10504

II. RELATED APPEALS AND INTERFERENCES

There are no known appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision regarding this appeal.

III. STATUS OF CLAIMS

<u>Claim</u>	<u>Status</u>
1-21	Rejected

Claims appealed: 1-21

IV. STATUS OF AMENDMENTS

No claim amendments have been filed subsequent to the Office Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

In the following paragraphs, references to page and lines of the specification as filed are indicated in square brackets, e.g., Page 1 line 28 through Page 2 line 12 would be indicated as [1:28-2:12] and Page 1, lines 28-32 would be indicated as [1:28-32]. Reference numerals and figure numbers are enclosed in parentheses.

Independent Claim 1 recites a method (FIG 3, 300) of representing real time data (e.g., FIG 4, 404) in a graphical format on a display (see, e.g., FIG 4, 400) of a data processing system (FIG 1, 100). Method (300) includes providing an icon (FIG 4, 402) as a portion of the display. The location of icon on the display may be positioned by a user of the system. See, e.g., [6:21-23]. Method (300) further includes determining (FIG 3, 306) the position of icon (402) on display (400). See, e.g., [5:27-29]. The graphical representation of the real time data (400) is refreshed when a new data point (406) is received. See, e.g., [6:13-16]. The position of icon (402) determines how much historical data is retained in the refreshed display. See, e.g., [4:22-25].

Independent Claim 8 recites a data processing system (100) that has a processor (102A), memory (106), and a display (113). System (100) includes computer executable instructions (also referred to as software or computer code) to represent real time data in a graphical format on the display (see, e.g., [4:4-27]). The instructions are operable to display a user-positionable icon (402) as part of the graphical representation and for determining the position of the icon (see, e.g., [5:26-6:2]). The instructions are further operable to refresh the graphical representation upon receiving a new data point. [6:11-18]. The position of icon (402) determines how much historical data is retained in the refreshed display. See, e.g., [6:13-31].

Independent Claim 15 is directed to computer code, stored on a computer readable medium, for displaying real time data on a data processing system. The computer code includes computer executable instructions, also referred to as computer code means, for generating a graphical representation of the real time data on the display(see, e.g., [4:4-27]). The graphical

representation includes a horizontal axis representing time and a vertical axis representing a parameter of interest (see, e.g., [5:9-14]). The code further includes instructions for displaying a user-positionable icon (402) as part of the graphical representation and for determining the position of the icon , (see, e.g., [5:26-6:2]). Icon (402) is moveable along the horizontal axis. See, e.g., [6:21-23]. The code further includes instructions for refreshing the graphical representation responsive to receiving a new data point, see, e.g., [6:13-16]. The position of the icon along the horizontal axis determines how much historical data is retained in the refreshed graphical representation, see, e.g. [6:23-25].

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-14 are unpatentable, under 35 USC § 103(a), over Takahashi *et al.*, U.S. Patent No. 5,999,152 (hereinafter "Takahashi") in view of Balassanian, U.S. Patent No. 6,507,349 (hereinafter "Balassanian").

Whether claims 15-21 are unpatentable, under 35 USC § 103(a), over Takahashi in view of Holzman *et al.*, U.S. Patent No. 6,064, 401 (hereinafter "Holzman").

VII. ARGUMENT

35 USC § 103(a) rejection of claims 1-14 over Takahashi in view of Balassanian

Claims 1-7

The Section 103(a) rejection is improper because the cited references do not disclose or suggest all of the claim limitations. Establishing *prima facie* obviousness requires a teaching or suggestion, in the prior art, of all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Claim 1, for example, recites a method of representing real time data on a display. A user positionable icon is provided as a portion of the display. A graphical representation of the data is refreshed following receipt of a new data point. The position of icon determines how much historical data is retained in the refreshed display.

The cited references do not teach or suggest an icon as a portion of its display because the winding-up position lines of FIG. 6, FIG. 8, and FIG. 10 are not elements of Takahashi's display. The Office Action asserts that Takahashi "teaches an icon as a portion of the display (winding-up position line, Figure 10)." See Office Action, detailed action, page 2, numbered paragraph 3. Appellant disagrees. The winding-up position line depicted in FIG. 10 is not a portion of Takahashi's display. FIG. 10 is self-described by Takahashi as "a graph diagram." See, Takahashi, Col. 4, lines 23-24. Appellant submits that it is unambiguously clear that Takahashi's graph diagrams, including those shown in FIG. 6, FIG. 8, and FIG. 10, are not displays. Instead, the Takashi graph diagrams are illustrations for the purpose of describing Takahashi's winding-up process. In FIG. 6, for example, the winding-up position line is depicted to illustrate the displacement "W" between the terminal end of the graph diagram and the winding-up line. Takahashi does not teach or suggest that the winding-up position lines of FIG 6, FIG 8, or FIG 10 are a part of its displays. To the contrary, Takahashi clearly shows in FIG 1, for example, an actual display (120) that clearly does not include the winding-up position line as part of the display. Therefore, because the rejection is based on the purported disclosure of an icon as part of a display by Takahashi and because Takahashi does not disclose such an icon, the cited references do not teach or suggest all of the claim elements. Accordingly, Appellant respectfully requests the Board to consider and reverse the Section 103(a) rejection of Claim 1 and its dependent claims.

The cited references do not teach or suggest providing a user positionable icon as claimed. The Office Action correctly acknowledges that Takahashi does not teach a user positionable icon. Attempting to support the Section 103(a) rejection, the Office Action states that Balassanian teaches "a user positionable icon as a portion of the display." Appellant notes that the Office Action stops short of stating that Balassanian teaches "providing a user positionable icon as a portion of the display." The distinction is significant in this case because Balassanian's moveable cursor is not provided by Balassanian's method of manipulating content. In its "Response to Arguments" section, the Office Action states that Balassanian's cursor 405

teaches the user positionable icon as claimed. Appellant submits that Balassanian's disclosure of a cursor 405 does not teach or suggest a claim element reciting: providing a user positionable icon as a part of the display. By expressly including a "providing" step, Claim 1 recites a relationship between the claimed method of representing real time data on a display and the claimed step of providing a user position icon as a portion of the display. Specifically, Claim 1 recites providing the user positionable icon as the first step in the claimed method for displaying real time data. In contrast, the provider of cursor 405 in Balassanian is a standard operating system. While Balassanian's application for manipulating displayed content interacts with the cursor and while a user may manipulate the cursor to alter the size of a window, Balassanian does not teach or suggest providing the cursor 405 itself as a component of the Balassanian application. To the contrary, it is unambiguously clear that cursor 405 "exists" independent of whether the Balassanian application is executing or not. Therefore, because the cited references do not teach or suggest providing an icon as a portion of a display, Appellant respectfully requests the Board to reverse the Section 103(a) rejection of Claim 1 and its dependent claims.

The Section 103(a) rejection of Claim 1 is also improper because there is no motivation to modify or combine the references to arrive at the claimed combination. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006).

Even if one improperly construes Claim 1 so broadly as to read the claimed user positionable icon onto Balassanian's moveable cursor 405, one would still be unable to demonstrate the requisite motivation to combine the two references. The Office Action attempts to support the Section 103(a) rejection of Claim 1 with a remarkable assertion, namely, that Balassanian's disclosure of a moveable cursor (405) would have motivated one of ordinary skill in the art to modify Takahashi's real time data display to incorporate a user positionable icon as claimed. Appellant disagrees. Balassanian's moveable cursor 405 is merely disclosed as being suitable for activating one of Balassanian's container controls, for example, to reduce the size of

a window. While one skilled in the art having the benefit of Balassanian might have been motivated by Balassanian to incorporate some type of cursor selectable element to control a sizing or position of Takahashi's display, nothing in Balassanian would motivate the incorporation of a positionable user icon controlling the amount of historical data as a part of Takahashi's display. Whereas the claimed user positionable icon is intimately connected to what real time data is displayed and how it is displayed in the method recited by Claim 1, Balassanian's moveable icon 405 and the associated window control 480 have no effect on the data itself, but instead control only the size of the window. Thus, the purpose for which Balassanian teaches moveable cursor 405 and window control 480 has nothing in common with the purpose for which the claimed icon is recited. Because there is no commonality in the purposes of the two elements, Appellant submits that Balassanian would not motivate one skilled in the art to modify Takahashi to achieve the claimed combination. Appellant submits, therefore, that there is no proper motivation to combine or modify Takahashi and Balassanian. Accordingly, Appellant respectfully requests the Board to reverse the Section 103(a) rejection of independent Claim 1 and its dependent claims.

Claims 8-14

The Section 103(a) rejection is improper because the cited references do not disclose or suggest all of the claim limitations. Establishing prima facie obviousness requires a teaching or suggestion, in the prior art, of all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Claim 8, for example, recites a system including computer code for representing real time data on a display. A user positionable icon is provided as a portion of the display. A graphical representation of the data is refreshed following receipt of a new data point. The position of icon determines how much historical data is retained in the refreshed display.

The cited references do not teach or suggest an icon as a portion of its display because the winding-up position lines of FIG. 6, FIG. 8, and FIG. 10 are not elements of Takahashi's display. Again, the Office Action asserts that Takahashi "teaches an icon as a portion of the

display (winding-up position line, Figure 10)." See Office Action, detailed action, page 2, numbered paragraph 3. Appellant disagrees. As argued above, the winding-up position line depicted in FIG. 10 is not a portion of Takahashi's display. FIG. 10 is self-described by Takahashi as "a graph diagram." See, Takahashi, Col. 4, lines 23-24. Appellant submits that it is unambiguously clear that Takahashi's graph diagrams, including those shown in FIG. 6, FIG. 8, and FIG. 10, are not displays. Instead, the Takashi graph diagrams are illustrations for the purpose of describing Takahashi's winding-up process. In FIG. 6, for example, the winding-up position line is depicted to illustrate the displacement "W" between the terminal end of the graph diagram and the winding-up line. Takahashi does not teach or suggest that the winding-up position lines of FIG 6, FIG 8, or FIG 10 are a part of its displays. To the contrary, Takahashi clearly shows in FIG 1, for example, an actual display (120) that clearly does not include the winding-up position line as part of the display. Therefore, because the rejection is based on the purported disclosure of an icon as part of a display by Takahashi and because Takahashi does not disclose such an icon, the cited references do not teach or suggest all of the claim elements. Accordingly, Appellant respectfully requests the Board to consider and reverse the Section 103(a) rejection of Claim 8 and its dependent claims.

The cited references do not teach or suggest providing a user positionable icon as claimed. The Office Action correctly acknowledges that Takahashi does not teach a user positionable icon. Attempting to support the Section 103(a) rejection, the Office Action states that Balassanian teaches "a user positionable icon as a portion of the display." Appellant notes that the Office Action stops short of stating that Balassanian teaches "providing a user positionable icon as a portion of the display." The distinction is significant in this case because Balassanian's moveable cursor is not provided by Balassanian's method of manipulating content. In its "Response to Arguments" section, the Office Action states that Balassanian's cursor 405 teaches the user positionable icon as claimed. Appellant submits that Balassanian's disclosure of a cursor 405 does not teach or suggest a claim element reciting: providing a user positionable icon as a part of the display. By expressly including a "providing" step, Claim 8 recites a

relationship between the claimed system for representing real time data on a display and the claimed computer code for providing a user position icon as a portion of the display. Specifically, Claim 8 expressly recites code for displaying the user positionable icon as the second element in the claimed system for displaying real time data. In contrast, the provider of cursor 405 in Balassanian is a standard operating system. While Balassanian's application for manipulating displayed content interacts with the cursor and while a user may manipulate the cursor to alter the size of a window, Balassanian does not teach or suggest providing the cursor 405 itself as a component of the Balassanian application. To the contrary, it is unambiguously clear that cursor 405 "exists" independent of whether the Balassanian application is executing or not. Therefore, because the cited references do not teach or suggest providing an icon as a portion of a display, Appellant respectfully requests the Board to reverse the Section 103(a) rejection of Claim 8 and its dependent claims.

The Section 103(a) rejection of Claim 8 is also improper because there is no motivation to modify or combine the references to arrive at the claimed combination. Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 986, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006).

Even if one improperly construes Claim 8 so broadly as to read the claimed user positionable icon onto Balassanian's moveable cursor 405, one would still be unable to demonstrate the requisite motivation to combine the two references. The Office Action attempts to support the Section 103(a) rejection of Claim 8 with a remarkable assertion, namely, that Balassanian's disclosure of a moveable cursor (405) would have motivated one of ordinary skill in the art to modify Takahashi's real time data display to incorporate a user positionable icon as claimed. Appellant disagrees. Balassanian's moveable cursor 405 is merely disclosed as being suitable for activating one of Balassanian's container controls, for example, to reduce the size of a window. While one skilled in the art having the benefit of Balassanian might have been motivated by Balassanian to incorporate some type of cursor selectable element to control a

sizing or position of Takahashi's display, nothing in Balassanian would motivate the incorporation of a positionable user icon controlling the amount of historical data as a part of Takahashi's display. Whereas the claimed user positionable icon is intimately connected to what real time data is displayed and how it is displayed in the system recited in Claim 8, Balassanian's moveable icon 405 and the associated window control 480 have no effect on the data itself, but instead control only the size of the window. Thus, the purpose for which Balassanian teaches moveable cursor 405 and window control 480 has nothing in common with the purpose for which the claimed icon is recited. Because there is no commonality in the purposes of the two elements, Appellant submits that Balassanian would not motivate one skilled in the art to modify Takahashi to achieve the claimed combination. Appellant submits, therefore, that there is no proper motivation to combine or modify Takahashi and Balassanian. Accordingly, Appellant respectfully requests the Board to reverse the Section 103(a) rejection of independent Claim 8 and its dependent claims.

35 USC § 103(a) rejection of claims 15-21 over Takahashi in view of Holzman

Claims 15-21

The Section 103(a) rejection is improper because the cited references do not disclose or suggest all of the claim limitations. Establishing prima facie obviousness requires a teaching or suggestion in the prior art of all claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). Claim 15, for example, recites a computer program product for displaying real time data on a data processing system. The product includes computer code for generating a graphical representation of the real time data and for displaying a user-positionable icon as part of the graphical representation and for determining the position of the icon where the user positionable icon is moveable along the horizontal axis. The product includes code for refreshing the graphical representation responsive to receiving a new data point, wherein the position of the icon along the horizontal axis determines how much historical data is retained in the refreshed graphical representation.

The cited references do not teach or suggest computer code for displaying the icon as a portion of its display because the winding-up position lines of FIG. 6, FIG. 8, and FIG. 10 are not elements of Takahashi's display. The Office Action once again asserts that Takahashi "teaches an icon as a portion of the display (winding-up position line, Figure 10)." See Office Action, detailed action, page 2, numbered paragraph 3. Appellant disagrees. As argued above, the winding-up position line depicted in FIG. 10 is not a portion of Takahashi's display. FIG. 10 is self-described by Takahashi as "a graph diagram." See, Takahashi, Col. 4, lines 23-24. Appellant submits that it is unambiguously clear that Takahashi's graph diagrams, including those shown in FIG. 6, FIG. 8, and FIG. 10, are not displays. Instead, the Takashi graph diagrams are illustrations for the purpose of describing Takahashi's winding-up process. In FIG. 6, for example, the winding-up position line is depicted to illustrate the displacement "W" between the terminal end of the graph diagram and the winding-up line. Takahashi does not teach or suggest that the winding-up position lines of FIG 6, FIG 8, or FIG 10 are a part of its displays. To the contrary, Takahashi clearly shows in FIG 1, for example, an actual display (120) that clearly does not include the winding-up position line as part of the display. Therefore, because the rejection is based on the purported disclosure of an icon as part of a display by Takahashi and because Takahashi does not disclose such an icon, the cited references do not teach or suggest all of the claim elements. Accordingly, Appellant respectfully requests the Board to consider and reverse the Section 103(a) rejection of Claim 15 and its dependent claims.

The cited references do not teach or suggest providing a user positionable icon as claimed. The Office Action correctly acknowledges that Takahashi does not teach a user positionable icon. Attempting to support the Section 103(a) rejection, the Office Action states that Holzman teaches "a user positionable icon as a portion of the display controlling the amount of information to be retained onscreen." Here, the Office Action attempts to support the rejection by taking liberties with the claim language. For example, Claim 15 does not recite an icon controlling the amount of information to be retained onscreen. More precisely, Claim 15 recites computer code for refreshing the graphical representation responsive to receiving a new

data point where the position of the icon along the horizontal axis determines how much historical data is retained in the refreshed representation. Thus, whereas Claim 15 recites an express relationship between a refresh event and the position of the user positionable icon, Holzman does not teach or suggest any such relationship. More specifically, Claim 15 recites that the position of the icon determines what data is visible following refresh. Refresh is recited in Claim 15 as the process that occurs when a new data point is added. Holzman does not teach or suggest any relationship between its sliding control and its refresh process. Thus, the cited references do not teach or suggest all of the claim elements. Moreover, because Holzman's sliding control is not related to determining what data is visible following refresh, it is only through the use of hindsight that one would be able assert that Holzman's disclosure of a sliding control to position data within the visible window of a display would have motivated one skilled in the art to modify Takahashi to incorporate a user positionable icon that determines how much historical data is displayed following a refresh event. In other words, even if one construed Claim 15 so broadly as to read upon that which is disclosed by Takahashi and Holzman, the Section 103(a) rejection is still improper because there is no proper motivation to combine or modify the references as the Office Action has done. Accordingly, because the cited references fail to teach or suggest all claim elements and because there is no motivation to combine the references, Appellant respectfully requests the Board to reverse the Section 103(a) rejection of Claim 15 and its dependent claims.

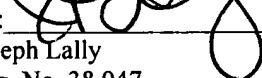
SUMMARY

Appellant respectfully requests the Board to review and reverse the rejections of all pending claims .

Appellant has submitted fees herewith. If, however, the submitted fees are insufficient, Appellant authorizes the Commissioner to charge the necessary fees to Deposit Account No. 50-0335 of Lally & Lally, L.L.P.

Respectfully submitted,

LALLY & LALLY, L.L.P.
Attorneys for Appellant

By: 
Joseph Lally
Reg. No. 38,947

VIII. CLAIMS APPENDIX

1 (original). A method of representing real time data in a graphical format on a display of a data processing system, comprising:

providing a user positionable icon as a portion of the display;

determining the position of the icon; and

refreshing the graphical representation responsive to receiving a new data point, wherein the position of the icon determines how much historical data is retained in the refreshed display.

2 (original). The method of Claim 1, wherein the graphical representation is refreshed when the graphical representation is full.

3 (original). The method of Claim 2, wherein the refreshing the representation comprises shifting all data points horizontally by a displacement, wherein the displacement is determined by the position of the icon.

4 (original). The method of Claim 1, further comprising appending a new data point to the display without discarding any historical data when the display is not full.

5 (original). The method of Claim 1, wherein the position of the icon determines the location of the first new data point occurring after the display is refreshed.

6 (original). The method of Claim 1, wherein representation includes a left side vertical axis and a right side vertical axis, wherein data points in proximity to the left-side vertical axis are older than data points in proximity to the right-side vertical axis.

7 (original). The method of Claim 6, wherein positioning of the icon at the left-side vertical axis will erase all historical data when the representation is refreshed and wherein

positioning of the icon at the right side vertical axis will erase a single data point when the representation is refreshed.

8 (original). A data processing system, including a processor, memory, and display, comprising:

computer code means for representing real time data in a graphical format on the display;

computer code means for displaying a user-positionable icon as part of the graphical representation and for determining the position of the icon; and

computer code means for refreshing the graphical representation responsive to receiving a new data point, wherein the position of the icon determines how much historical data is retained in the refreshed display.

9 (original). The system of Claim 8, wherein the graphical representation is refreshed when the graphical representation is full.

10 (original). The system of Claim 9, wherein the code means for refreshing the representation comprises code means for shifting all data points horizontally by a displacement, wherein the displacement is determined by the position of the icon.

11 (original). The system of Claim 8, further comprising computer code means for appending a new data point to the display without discarding any historical data when the display is not full.

12 (original). The system of Claim 8, wherein the position of the icon determines the location of the first new data point occurring after the display is refreshed.

13 (original). The system of Claim 8, wherein representation includes a left side vertical axis and a right side vertical axis, wherein data points in proximity to the left-side vertical axis are older than data points in proximity to the right-side vertical axis.

14 (original). The system of Claim 13, wherein positioning of the icon at the left-side vertical axis will erase all historical data when the representation is refreshed and wherein positioning of the icon at the right side vertical axis will erase a single data point when the representation is refreshed.

15 (previously presented). A computer program product for displaying real time data on a data processing system, the product being stored on a computer readable medium and comprising:

computer code means for generating a graphical representation of the real time data on the display wherein the graphical representation includes a horizontal axis representing time and a vertical axis represents a parameter of interest;

computer code means for displaying a user-positionable icon as part of the graphical representation and for determining the position of the icon wherein the user positionable icon is moveable along the horizontal axis; and

computer code means for refreshing the graphical representation responsive to receiving a new data point, wherein the position of the icon along the horizontal axis determines how much historical data is retained in the refreshed graphical representation.

16 (original). The computer program product of Claim 15, wherein the graphical representation is refreshed when the graphical representation is full.

17 (original). The computer program product of Claim 16, wherein the code means for refreshing the representation comprises code means for shifting all data points horizontally by a displacement, wherein the displacement is determined by the position of the icon.

18 (original). The computer program product of Claim 15, further comprising computer code means for appending a new data point to the display without discarding any historical data when the display is not full.

19 (original). The computer program product of Claim 15, wherein the position of the icon determines the location of the first new data point occurring after the display is refreshed.

20 (original). The computer program product of Claim 15, wherein representation includes a left side vertical axis and a right side vertical axis, wherein data points in proximity to the left-side vertical axis are older than data points in proximity to the right-side vertical axis.

21 (original). The computer program product of Claim 20, wherein positioning of the icon at the left-side vertical axis will erase all historical data when the representation is refreshed and wherein positioning of the icon at the right side vertical axis will erase a single data point when the representation is refreshed.

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IX. EVIDENCE APPENDIX

NONE

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X. RELATED PROCEEDINGS APPENDIX

NONE